

Notice of Allowability**Application No.**

09/288,837

Examiner

Zachariah Lucas

Applicant(s)

MACDONALD ET AL.

Art Unit

1648

-- **The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the interview September 8, 2004.
2. ☒ The allowed claim(s) is/are 89, 90, 93, 97, 104, and 109.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 9-8-2004.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☒ Other Advisory Action.

DETAILED ACTION

Status of the Claims

1. Claims 84, 90, 93, 97, 104, and 109, were pending in the application upon the mailing of the Final Action on March 9, 2004. In that action, all of the pending claims were rejected. An After Final Amendment was filed on July 9, 2004. While the amendment was entered into the application, it did not bring the application into condition for allowance. See, the Advisory Action (indicated in PALM as mailed on August 19, 2004, a copy of which is attached to the present action). The Examiner called the Applicant and indicated that the claims would be allowable if claim 104 was amended to limit the claims to embodiments wherein the antigen was the complete Her2 antigen. The Applicant did not accept the amendment at that time. See, Interview Summary, mailed on August 19, 2004. However, on September 8, 2004, the Applicant called the Examiner, and indicated that they would accept an Examiner's Amendment making the change to bring the case into condition for allowance.

2. In view of the Amendment below, claims 89, 90, 93, 97, 104, and 109 are allowed.

EXAMINER'S AMENDMENT

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Karen A. Magri on September 8, 2004.

Pending claim 104 has been amended to read as follows:

104. A composition comprising infectious Venezuelan Equine Encephalitis (VEE) replicon particles, wherein said VEE replicon particles comprise one or more heterologous nucleotide sequences encoding the Her2 antigen, and wherein said VEE replicon particles infect antigen-presenting cells, and further wherein said VEE replicon particles comprise one or more attenuating mutations.

4. Claim 104 has been amended to include amendment suggested in the interview summary mailed on August 19, 2004 (i.e. to narrow the claims to embodiments wherein the antigen is the full length Her2 antigen, and not any Her2 gene product). The amendment was made to bring the application into condition for immediate allowance.

In view of the amendment above, the claims have been limited to those embodiments indicated in the Final Action to be allowable over the prior art as achieving unexpected results. The rejection is therefore withdrawn from the claims as amended.

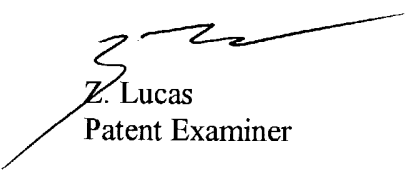
Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachariah Lucas whose telephone number is 571-272-0905. The examiner can normally be reached on Monday-Friday, 8 am to 4:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Z. Lucas
Patent Examiner



JAMES HOUSEL 9/20/04
SUPERVISORY PATENT EXAMINER
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